2024:BHC-AUG:7915

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

922 BAIL APPLICATION NO. 2203 OF 2023

NAMDEO DADARAO KACHKURE
VERSUS
THE STATE OF MAHARASHTRA
...

Advocate for Applicant : Mr. Sambhaji Subhashrao Tope.
APP for Respondent/State : Mr. Mukesh K. Goyanka.
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CORAM : **SANJAY A. DESHMUKH, J.**
DATE : 21st March, 2024.

P.C.:

1 Heard.

2 This is an application, under Section 439 of the Code of Criminal Procedure, 1973, for grant of regular bail in connection with Crime No.455 of 2023, registered at CIDCO Police Station, District Aurangabad, for the offences punishable under Sections 406, 409, 420, 465, 467, 468, 471, 120-B, 217 read with 34 of the Indian Penal Code and under Sections 3 and 4 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act.

3 It is averred in the report that this applicant and others accused fabricated the false documents and misappropriated huge amount of Adarsh Nagri Sahakari Patsanstha, Aurangabad by granting loan amount of crores of rupees illegally to this applicant and others. It

is alleged that all the applicants are borrowers and they took loan amount without complying the legal requirement of documents for granting loan to them.

4 The specific role of this applicant as pointed out in the report and the charge-sheet is that, as per column No.6, it is averred that he fabricated the false documents pertaining to loan and compelled some of the employees of Adarsh Mahila Nagri Sahakari Bank to fill up those documents and obtained loan in his name by showing false sureties for the loan of Rs.2,38,95,151/- and later on transferred that amount in his account.

5 The learned counsel for applicant submitted that this applicant is not employee of the Adarsh Patsanstha, he is serving as an Assistant Manager in Adarsh Mahila Nagari Co-operative Bank. He has been falsely implicated in the crime. No any amount is credited in his account. It is falsely shown that he fabricated false documents and transferred some amount of loan in other accounts. He also fabricated some vouchers by pressurizing the employees and witnesses. He entered false entry in the computer regarding that transfer of amount. He fabricated false file of loan proposal by mentioning false names of sureties. He obtained cash credit loan of Rs.2,38,95,151/- on 31st March, 2019. He submitted that no such documents are filed on

record that some amount has been transferred by him on other accounts and also alleged cash credit amount. Though there are statements of some of the witnesses, those statements are not *prima-facie* corroborated by the documentary evidence. It is lastly prayed to allow the application.

6 The learned counsel for applicant also pointed out that one more crime bearing Crime No.455 of 2023 by making some allegations is registered on the same day in the same police station, for which Bail Application No.2203 of 2023 is filed by this applicant for granting bail. For that purpose, he is relying upon the authority of ***Amitbhai Anilchandra Shah Vs. Central Bureau of Investigation and another, 2013 (6) SCC 348***, in which the Honourable Supreme Court in paragraph Nos.58.2, 58.3 and 58.9 held as under:

> "58.2. The various provisions of the Code of Criminal Procedure clearly show that an officer-in-charge of a police station has to commence investigation as provided in Section 156 or 157 of the Code on the basis of entry of the first information report, on coming to know of the commission of cognizable offence. On completion of investigation and on the basis of the evidence collected, the investigating officer has to form an opinion under Section 169 or 170 of the Code and forward his report to the Magistrate concerned under Section 173(2) of the Code.
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> 58.3. Even after filing of such a report, if he comes into possession of further information or material, there is no need

to register a fresh FIR, he is empowered to make further investigation normally with the leave of the court and where during further investigation, he collects further evidence, oral or documentary, he is obliged to forward the same with one or more further reports which is evident from sub-section (8) of Section 173 of the Code. Under the scheme of the provisions of Sections 154, 155, 156, 157, 162, 169, 170 and 173 of the Code, only the earliest or the first information in regard to the commission of a cognizable offence satisfies the requirements of Section 154 of the Code. Thus, there can be no second FIR and, consequently, there can be no fresh investigation on receipt of every subsequent information in respect of the same cognizable offence or the same occurrence or incident giving rise to one or more cognizable offences.

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58.9. Administering criminal justice is a two-end process, where guarding the ensured rights of the accused under the Constitution is as imperative as ensuring justice to the victim. It is definitely a daunting task but equally a compelling responsibility vested on the court of law to protect and shield the rights of both. Thus, a just balance between the fundamental rights of the accused guaranteed under the Constitution and the expansive power of the police to investigate a cognizable offence has to be struck by the court. Accordingly, the sweeping power of investigation does not warrant subjecting a citizen each time to fresh investigation by the police in respect of the same incident, giving rise to one or more cognizable offences. As a consequence, in our view this is a fit case for quashing the second FIR to meet the ends of justice."

7 The learned counsel for applicant further pointed out the order dated 20th October, 2023 passed by this Court in Bail Application No.1822 of 2023. In the said order, this Court in paragraphs 5 and 6 held as under:-

> "5. Learned APP strongly opposes the prayer for grant of bail. He would submit that as per lists of Directors, the applicant is named as one of the Director of Society. The record shows that since 2018, she has obtained the loan and money transferred to her account can be seen from the account statements. Learned APP would further point out that on 29/09/2021, the amount of Rs.1,40,900/- has been transferred to the applicant from the account of Adarsh Nagri Sahakari Patsanstha, Aurangabad. He would further point out that the loan applications or loan sanctioned letters do not indicate the signatures of sureties. He would further submit that the complicity of the applicant can be found on the basis of material collected during the investigation. Hence, he urges to reject the application.
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> 6. Having considered the submissions advanced and on perusal of the investigation papers, it is evident that, the applicant has been appointed as Director of Adarsh Nagri Sahakari Patsanstha on 26/06/2022 and she attended her first meeting in that capacity on 26/07/2022. The perusal of contents of FIR clearly demonstrates that the FIR is lodged on the basis of audit report for the period from 2018 to 2022 and report dated 13/06/2023 submitted to the Deputy Registrar of Co-operative Society at Aurangabad. Eventually, the applicant was not the Director during the said period. Even after the appointment of applicant as a Director, her directorship was not

> approved by the Competent Authority. It is, therefore, difficult to link the applicant with the day to day transactions of the Society, particularly for the period, which is the subject matter of the offence."

8 The learned APP for the State strongly opposed the application and submitted that the applicant is involved in the serious crime. He alongwith other accused have duped the said bank with the help of the directors of that bank. He pointed out the statements of witnesses and the role of this applicant as mentioned in the report, which is shown in the charge-sheet, particularly, Volume-I. He submitted that 35000 depositors are hanged by the said crime and their amount of crores of rupees is abused and misused by this applicant and others. The applicant is involved in the serious crime. He will certainly pressurize the prosecution witnesses and tamper with the prosecution evidence. Though undertaking is given for realizing the real estate of the main accused / director of the said bank, the applicant may cause hindrance in the process of selling of those properties. Maximum witnesses are from Aurangabad. Considering the status of the applicant and his role, it is lastly prayed to reject the application.

9 Perused the charge-sheet, particularly, the report and statements of witnesses as well as the additional charge-sheet. The

role of this applicant is one and the same shown in both the crimes i.e. in Crime No.454 of 2023 and Crime No.455 of 2023. Same amount is alleged to have been duped by him. He is Assistant Manager of Adarsh Mahila Nagri Sahakari Bank. No doubt there are statements of two witnesses namely Badrinath Kachkure and Ashok Gade, who have stated that this applicant was attending the meetings at the time of sanctioning cash credit loan. He used to prepare some files for it. But he is neither the director of Adarsh Bank nor the employee of it. It is not pointed out by documentary evidence that the duped amount is transferred in his account or in the account of his relatives.

10 Considering the facts and circumstances of the case as well as the role of this applicant and the nature of the crime, the trial certainly will not begin and conclude as early as possible in near future. The other co-accused are released on bail. This applicant is also entitled for parity. Merely because the applicant is involved in serious crime, his right to bail cannot be denied as his presence can be secured for the trial. As far as pressurizing the prosecution witnesses is concerned, conditions can be imposed on the applicant that he shall not enter into Aurangabad city, as many depositors are residing in Aurangabad city. Therefore, the bail application deserves to be allowed on certain conditions. Hence, the following order:-

ORDER

I. The bail application is allowed.

II. The applicant in connection with Crime No.455 of 2023, registered at CIDCO Police Station, District Aurangabad, for the offences punishable under Sections 406, 409, 420, 465, 467, 468, 471, 120-B, 217 read with 34 of the Indian Penal Code and under Sections 3 and 4 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, be released on bail on furnishing personal bond of Rs.1,00,000/- with surety of the like amount by each of them on following conditions:-

a) The applicant shall not pressurize the prosecution witnesses, in any manner.

b) The applicant shall not tamper with the prosecution evidence, in any manner.

c) The applicant shall not enter into Aurangabad city till conclusion of trial, except the dates fixed for hearing of the case in the Trial Court.

11 If breach of any of the above conditions is noticed by the Trial Court, the Trial Court is at liberty to cancel the bail of this applicant without reference to this Court.

[SANJAY A. DESHMUKH, J.]

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